

**DIVISION OF ADMINISTRATIVE LAW APPEALS
2009 REPORT TO THE GENERAL COURT PURSUANT TO § 4H OF
CHAPTER 7 OF THE GENERAL LAWS**

February 24, 2010

Executive Summary

This report is submitted for calendar year 2009 pursuant to § 4H of Chapter 7 of the General Laws. In addition to a report of the status and disposition of the cases received in 2009 as required by the statute, we are also including an update of the additional information we provided in our Report for 2008. Our purpose is to continue to give the General Court an overview of the status of our backlog and to report on the progress of implementing the remedial measures we identified in the 2008 report.

Tab 1 contains a summary of open cases as of the date of this report. Tab 2 contains an updated Cases Opened/Cases Closed historical summary. To recap the conclusions of our last report, as of the date of this report, the Division is faced with 4859 open cases, a backlog that has grown steadily at a rate of approximately 550 cases per year over the last ten years. In 2009 we received 1057 new cases, or 106 fewer than our historical average of 1163. We closed 820 cases, or 151 more than our historical average of 668. Nevertheless, we still received 237 more cases in 2009 than we were able to close. This means that our backlog continued to grow in Calendar 2009. An increased backlog means that our average time to process cases has increased as well. Because we will have only eight full-time magistrates and one part-time magistrate to hear and decide these cases for the foreseeable future, the backlog and case pending times are not problems that are likely to be solved in the short term.

On the other hand, there are some hopeful signs. In the last five months of 2009 with new management in place, we closed out 451 cases, or 90 cases per month. Projecting this average over a full year, we have been closing cases during the last five months at a rate of 1080 per year, or 412 cases more than the Division's historical average. Because we received 1057 new cases in 2009, this also means that, at least for the last five months, we have been keeping up with our new case intake. We believe this reflects a more intense case management approach and is one of the metrics we will be continuing to monitor in the future.

In Part I, we focus on the cases received in 2009 and their disposition, as specifically required by § 4H of Chapter 7. In Part II, we present summaries of hearings held and decisions issued in 2009 as two measures of the work performed by the Division during 2009. In Part III, we address the initiatives currently being implemented to address the backlog.

PART I: ANALYSIS OF CASES RECEIVED IN 2009

In this section, we focus on the cases received in 2009 and their disposition as specifically required by § 4H of Chapter 7 of the General Laws.

Tab 3 contains a summary and detail report of the cases opened in 2009. The summary report identifies the number of cases received by type of case. The detail report lists each individual case in each case type and identifies its docket number, the identities of the parties, the last event in the case and date of the last event, and the date it was filed with the Division.

Tab 4 contains summary and detail reports of the cases closed in 2009. The cases are listed by case type and in order of docket number within each case type. The "last

event” entry in most cases identifies the event (decision, withdrawal, etc.) that caused the case to be closed in the database. The time a case was open at the Division is determined by the difference between the listed Open Date and Last Event Date. The disposition of the 2009 cases that were closed can be tracked by referring to the cases with docket numbers beginning with “09-.” If a case with a docket number beginning with “09-“ is not listed on the closed cases report, it is still open.

PART III: STATISTICS ON HEARINGS HELD AND DECISIONS ISSUED

Tab 5 contains a summary of hearings held each month in 2009. Tab 6 contains a summary of decisions issued each month in 2009. You will note that in August, we issued 79 decisions. This unusually high number reflects the fact that decisions that had been prepared by the magistrates in earlier months were held for management review and issued in August. Recently the Division implemented a formal decision review procedure that ensures appropriate management review within one calendar week. The purpose of this revised management review protocol is to ensure both that this type of artificial distortion in the production statistics will not recur in the future and to assure the magistrates that if they are diligent in processing cases and preparing decisions in a timely manner, management review will not unnecessarily delay issuance of their decisions. This revised decision review protocol has been effective and has eliminated any significant backlog of case decisions in which the magistrates have completed their drafts.

PART III: INITIATIVES TO INCREASE TRANSPARENCY AND PRODUCTIVITY GOING FORWARD

Actions That Have Recently Been Taken to Improve Case Scheduling and Management

Improved Scheduling of Hearings

In August and September, 2009, the Division appointed experienced magistrates to coordinate hearing schedules and assignment of presiding magistrates in each of the major areas of our jurisdiction. We believe this approach has been an unqualified success. Our client agencies are now able to determine almost immediately the status of each of their pending cases and are able to alert us quickly if there is a problem with any particular case. We are also able to keep them informed of those systemic problems such as the backlog that impact their cases and that cannot be resolved in the short term. We expect that this will be reflected in increased customer satisfaction.

Pre-screening and Streamlining Cases by Identifying Cases or Issues That Can be Decided Without an Evidentiary Hearing

As we noted in our 2008 Report, while the number of hearings held is one of the measures of the total amount of work we perform, it is not a good measure of the Division's overall productivity or efficiency. We have begun reviewing pending cases to determine whether there are cases for which there is likely no genuine dispute as to the material facts and for which a hearing is not necessary. Where it appears that a case should be resolved on the papers or should be decided as a matter of law, we have issued Pre-Hearing Orders identifying the basis for our conclusion and requiring the parties to submit Pre-Hearing memoranda identifying any disputed issues. The result of this process is often to cause a party to withdraw the appeal or attempt to settle. In every

case, the issues are at least clarified. We believe this process is one of the significant contributors to our increased case closing rate.

Publication of our Retirement Case Queue on our Website

Understandably one of the most frustrating aspects of litigation for parties is the inability to determine when a case will be scheduled for hearing or other disposition. Often this results in phone calls or other correspondence asking when a case will be scheduled. In general, our policy is to schedule cases in the order in which they were received unless a party moves to expedite and there is good cause to do so. This is what we tell the litigants when they inquire as to when their cases will be heard. In the past, however, the parties have not had any tools available to determine even where they stand in the queue. To address this, we posted the retirement case hearings queue on our website. While this does not tell a party exactly when his or her case will be heard, it does at least give him or her some idea of where the case is on the list.

Assessment of Filing Fees

We have drafted a proposed fee schedule and are currently in the process of having it reviewed and approved internally before subjecting it to the regulatory hearing process. While it is critical to ensure that we do not undermine our fundamental mission of providing due process review of agency actions by creating barriers to entry, it is also important to attempt to recover the cost of providing our services and to protect the process from frivolous appeals. Currently, there is no disincentive to filing non-serious appeals. For example, in many cases all a litigant need do to file an appeal, regardless of the merits or significance of the matter, is fax or mail a one-sentence notice of appeal. This causes us and the responsible administrative agency to open and process the case in

the same manner and with the same priority as any other case. Even if the case is totally frivolous, it takes time and resources to deal with it and delays the disposition of other significant and meritorious appeals. We expect that a reasonable fee schedule will alleviate the frivolous appeals problem at least somewhat.

Actions we Expect to Propose in the Near Future

Summary Disposition Regulations for Retirement Cases:

As noted above, it is fairly obvious that if we are going to be successful in reducing significantly the backlog of our cases, we need to change our and the parties' approach to litigating cases in which there is no serious dispute of facts. In order to help educate the parties and assist the magistrates to manage the flow of evidence in such cases, we expect in the near future to promulgate procedural regulations formally to implement a summary disposition procedure analogous to the Rule 56 summary judgment procedures used in the federal courts.

PART IV: OTHER EVENTS AFFECTING THE DIVISION

Consolidation with the Bureau of Special Education Appeals: The Department of Education has proposed to consolidate the Bureau of Special Education Appeals with the Division and that proposal is currently before the General Court as part of the Governor's Article 87 Reorganization proposed legislation. While this will be a significant event for the Agency and is expected to involve a significant effort for the rest of the fiscal year, it is not expected to affect substantially the operations of either the current Division or the Bureau. The Bureau will be assigned to the Division for administrative purposes, but will continue to operate as a separate unit within the Division.

CONCLUSION

We appreciate the opportunity to present this second Annual Report. We remain convinced that the independent “central panel” approach to review of agency actions is the most fair, efficient and cost effective one available and that our work provides a vital service to the Commonwealth and its citizens. Our magistrates are justly proud of the work they have done over many years and we look forward to meeting the challenges addressed in this report in the future.

FOR THE DIVISION OF ADMINISTRATIVE LAW APPEALS

Richard C. Heidlage
Acting Chief Administrative Magistrate

Dated: February 24, 2010